



## **Educator Grievances and Disputes Policy**

**Policy Number:** 10

**Date Updated:** 5/9/18

### **Rationale and Policy Considerations**

The education and care service seeks to promote equitable and fair workplace employment practices, and in this regard considers it is crucial to establish legal and ethical grievance procedures. The service endeavours to establish decision making processes for staff grievances that are transparent and which clearly define accountability.

The service has an understanding of equal employment opportunities legislation; the Fair Work Act and other relevant award/enterprise agreement conditions; and the requirements for staffing the education and care service contained within the Education and Care Services National Law.

### **Legislation and Government Requirements**

- Education and Care Services National Law (WA) Act 2012.
- Education and Care Services National Regulations 2012.
- Fair Work Act 2009
- Federal and State Equal Opportunity Legislation

### **Needs**

#### **Children's**

Educators with appropriate knowledge, skills and responsible conduct to provide a safe, respectful and developmentally appropriate educational program; educators as appropriate role models; conflict free learning environment.

#### **Families'**

Educators act in accordance with service policies and procedures to provide a safe and caring environment for their children; confidence that the service only retains suitable educators/staff or volunteers; conflict free learning environment for children.

#### **Educators**

Opportunity to voice concerns in a positive and confidential manner; positive work environment; to be treated fairly and equitably in regard to any workplace or performance issues.

#### **Management**

Effective grievance policy in place in order to make informed decisions; to deal with grievance in a positive manner; to address all grievances promptly; to maintain a harmonious and ethical workplace environment.

### **Scope**

This policy is written for staff and visitors of Merino Court Childcare Centre

### **Policy Statement**

The service aims to foster positive relations between all educators, staff, volunteers and management. Every employee or volunteer has the right to a harmonious and supportive working environment. It is important that the children who attend the centre sense an atmosphere of warmth, trust and security. Solutions will be sought to resolve all disputes, issues or concerns that impact on or affect the day to day well being of the service in a transparent, fair, prompt and positive manner.

Solutions are sought to resolve all disputes, issues or concerns in a prompt and positive manner that recognises the importance of:

- procedural fairness and natural justice;
- ethical conduct;
- a service culture, free from discrimination and harassment; and
- the opportunity for review and further investigation.

Any issue in regard to an employee's work performance or conduct will be addressed in compliance with all Fair Work Act codes and employee rights, and will provide the employee with opportunities to respond to any allegations, and to overcome any unsatisfactory performance.

**Policy Principles**

- Every employee is provided with clear written guidelines detailing grievance procedures.
- All grievances will be dealt with promptly and confidentiality in a manner that:
  - values the opportunity to be heard;
  - promotes conflict resolution;
  - encourages the development of harmonious relationships;
  - ensures that conflicts and grievances are mediated fairly; and
  - is transparent and equitable.
- All employees are provided with full guidelines about their roles and responsibilities, and regular reviews of their performance are carried out in accordance with Educator/Staff Appraisal Training and Development Policy.
- All confidential conversations/discussions will take place in a quiet area away from children, parents and other educators/staff, and confidentiality of individual issues will be maintained.
- Where possible all grievances will be discussed directly with the person concerned. If a resolution is not found then the relevant procedures for dealing with the grievance will be followed.
- In the case of wrongful allegations, all records pertaining to these allegations will be taken from the staff member's file and destroyed.
- Discussing problems and grievances that you have with a staff member with other staff is not permitted. If the behaviour of a staff member is interfering with your work then you need to approach that person and try to work out a solution. Venting to other staff members does not address the issue at hand and results in division within the team.
- Gossiping will not be accepted.
- Persons found to be continually expressing their grievances to other staff members will be given a warning. After the second warning, their employment at the centre may be placed in jeopardy. Complaining and gossiping destroys the working environment.
- At no times is it acceptable to yell or abuse another staff member. Furthermore, any discussion needs to be done in private and well away from other staff, children and families.
- While a hierarchy of responsibility is necessary for smooth running of the service, it is not a hierarchy of importance. All staff have equal rights to respect and understanding. Senior staff who abuse their authority will be reprimanded. Similarly, newer staff should respect the routines and direction of more established staff and not give direction or attempt to change things without considering the reason behind the way we do things.

**Strategies for dealing with conflict**

<b>Constructive Management</b>	<b>Destructive Management</b>
<ul style="list-style-type: none"> <li>• Agree on a time to talk it out</li> <li>• Honestly express your feelings</li> <li>• Depersonalise: focus on the problem not the person</li> <li>• Select a neutral referee</li> <li>• Develop a positive mature attitude</li> <li>• Focus on specifics and simplify the situation</li> <li>• Listen, wait and learn</li> <li>• Forgive and forget</li> <li>• Be open and available</li> </ul>	<ul style="list-style-type: none"> <li>• Catch the person off guard</li> <li>• Passively express your feelings</li> <li>• Personalise the disagreement: "She's never liked me"</li> <li>• Get your friends to referee</li> <li>• Be as negative and vindictive as possible</li> <li>• When something goes wrong, look for someone to blame</li> <li>• Generalise and exaggerate</li> <li>• Be silent and superior</li> <li>• When problems arise, walk out</li> </ul>

## Employee's rights

- Under the Fair Work Act 2009, employees under the national workplace relations system have defined rights. General protections within the Act aim to protect employees from adverse actions in breach of the following rights:
  - workplace rights - such as the entitlement to benefit under workplace law (i.e. award or enterprise agreement) or the entitlement to make a complaint or inquiry in relation to their employment;
  - industrial activities - such as the entitlement to take industrial action or to belong or not belong to a union or employer association;
  - other protections - such as freedom from discrimination (on the grounds of a person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin) or the entitlement to take a temporary absence from work due to illness or injury;
  - sham arrangements - where a person's employment status is misrepresented as an independent contractor.
- The employer will not take action against an employee that will compromise the employee's rights under the Fair work Act 2009.
- If an employee believes that their termination of employment, or treatment as an employee is a breach of their general protections under the Fair Work Act, they may seek assistance from Fair Work Australia. Applications relating to general protections where the employee has been dismissed must be lodged with Fair Work Australia within 60 days of being dismissed.

## Unfair dismissal

- The service will ensure the employee is not dismissed in a manner that is 'harsh, unjust or unreasonable' by conducting an unfair dismissal check prior to termination. This check will include ensuring:
  - there was a valid reason for the dismissal related to the employee's unsatisfactory conduct, performance or capacity to do the job;
  - the employee was clearly warned that they were not doing the job properly and would have to improve their conduct or performance, or otherwise be dismissed;
  - the employee was provided a reasonable amount of time to improve his/her performance or conduct;
  - the service offered to provide the employee with training or another opportunity to develop his or her skills;
  - the employee did not improve their performance or conduct to the required standard;
  - the employee was notified of the reason for dismissal and given an opportunity to respond;
  - the employee was given the opportunity to have a support person present to assist in discussions relating to the dismissal;
  - the service had kept records of all warnings made to the employee or discussions on how his/her conduct or performance could be improved;
  - the employer used the full expertise that the enterprise was able to provide to ensure a fair dismissal process.
- If an employee believes that their employment has been terminated unfairly, they may apply to Fair Work Australia for assistance to resolve the matter through conciliation. Applications relating to a dispute over unfair dismissal must be lodged with Fair Work Australia within 14 days of dismissal.

## Follow-up and review

- Whenever a grievance is addressed the process will be analysed to determine whether policy revision or development is required.
- The grievance policy for educators/staff is reviewed and evaluated whenever an incident occurs, to ensure the processes are clear and non-discriminatory.

## Related Documents

- **Education and Care Services National Law Act 2010(Vic)** - Section 3(2)(a)(b); 3(3)(a)(c)(d)(f); 108; 109; 165; 166; 167; 168

- **Education and Care Services National Regulations** : 75(b)(i); 77; 8185; 86; 93; 94; 168 (2)(i); 169 (2)(d); 170-171
- **National Quality Standard for Early Childhood Education and Care and School Age Care (Nov 2010)** - Element 2.3.1; Element 4.2.1; Element 4.2.3; Element 7.2.1; Element 7.2.2;
- **Early Years Learning Framework for Australia** - Principles - 1. Secure, respectful and reciprocal relationships; 4. Respect for diversity; 5. Ongoing learning and reflective practice
- **Framework for School Age Care in Australia** - Principles - 1. Secure, respectful and reciprocal relationships; 4. Respect for diversity; 5. Ongoing learning and reflective practice
- Educator/staff Code of Ethics
- Grievance procedures
- Performance appraisal forms
- Performance criteria for each position
- Procedure for dealing with gross misconduct
- Procedure for managing poor work performance or misconduct
- Training and professional development plans

#### **Links to other policies**

- Confidentiality and Privacy
- Diversity and Inclusion
- Educator/Staff Appraisal Training and Development
- Educator/Staff Dress Code
- Educator/Staff Immunisation
- Educator/Staff and Volunteer Orientation
- Equal Opportunity
- Establishing a Protective Environment
- Occupational Safety and Health
- Recruitment of Educators, Staff and Volunteers
- Supervision

#### **Sources**

[www.pscalliance.org.au](http://www.pscalliance.org.au)

#### **Further Sources**

**DEEWR Child Care Service Handbook 2011 - 2012; Section 6.7 What are my service's responsibilities to educators?** - Retrieved 9 May 2012, from <http://www.deewr.gov.au/EarlyChildhood/Resources/Handbook/Pages/default.aspx>

**Fair Work Australia -- Best Practice Guides to help employers and employees achieve happier, fairer and more productive workplaces.** - Retrieved 7 April 2012, from <http://www.fairwork.gov.au/resources/best-practice-guides/pages/default.aspx>

**Fair Work Information Statement - Fair Work Ombudsman** - Retrieved 16 May 2011, from <http://www.pscwa.org.au/getdoc/019d7cac-a5e8-484b-9814-4a889d9d8992/Australian-Government-Fair-Work-Information-Statem.aspx>

**Fair Work Australia** - portal to access information about the Fair Work Act 2009 - Retrieved 16 May 2011, from <http://www.fwa.gov.au/>

**Fair Work Australia - Small Business Fair Dismissal Code** - Retrieved 16 May 2011, from [http://www.fwa.gov.au/documents/dismissals/Small\\_Business\\_Fair\\_Dismissal\\_Code.pdf](http://www.fwa.gov.au/documents/dismissals/Small_Business_Fair_Dismissal_Code.pdf)

Fair Work Australia - Guide to General Protections - Retrieved 16 May 2011, from <http://www.fwa.gov.au/documents/factsheets/GeneralProtectionsGuide.pdf>

**Document History**

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